IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE SIXTEENTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION NO : 14247 of 1996

Between:

S. G. Sai Sudhakar, S/o. Nagabhushana Rao
R/o.D.No.7-165,Kamalanagar, ECIL,
Hyderabad.

..... PETITIONER

AND

1. The Chairman and Managing Director,
Bharat Dynamics Ltd (A Government of India Co.,)
having its Registered Office at Kanchanbagh Hyderabad.
2. The Deputy General Manager, (P&A) Bharat Dynamics Ltd.,
Bhanapur, Medak Dist.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of Writ of Mandamus Directing the respondents to reinstate the petitioner with all consequential benefits relating of the judgment W.P.No.7124/90 and batch.

Counsel for the Petitioner: MR. KOWTURU VINAYA KUMAR

Counsel for the Respondents: MR. K. SRINIVASAMURTHY

The Court made the following:

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ORDER:

The writ petition is filed seeking the relief as under—

"Direct the respondents to reinstate the petitioner with all consequential benefits relating to the judgment in W.P.No.7140 of 1990 and batch".

The petitioner earlier filed W.P.No.1440 of 1994 for a declaration that the action of the respondents in terminating his services, without notice and not considering his case on par with the petitioners' in W.P.No.7124 of 1990 in respect of appointment to the post of Assistant Grade-C, as arbitrary and for consequential benefits.

W.P.No.7124 of 1990 was filed by nine employees of the Bharat Dynamics Limited challenging several proceedings of the year 1990 purportedly terminating the petitioners therein from service. W.P.No.7124 of 1990 was allowed with costs by the judgment dated 10-06-1991 of a learned Single Judge of this Court. Whereby the order terminating the petitioners' from service was declared void and the employer was directed to pay them back wages from the respective dates of termination till their reinstatement into service in accordance with the other directions in the judgment. It was also directed that if the posts for which they were appointed are abolished and they cannot be absorbed, then they would have to be paid back wages upto the respective dates on which those posts were abolished.

The earlier writ petition No.1440 of 1994 filed by the petitioner was disposed of in terms of the judgment in W.P.No.7124 of 1990 directing the respondents-Company to consider the case of the petitioner for appointment to the post of Assistant Grade-C, without reference to sponsorship by the Employment Exchange, along with other candidates sponsored by the Employment Exchange, as and when vacancies arise, on the analogy that similarly situated 'C' Grade Assistants, were granted the benefits in W.P.No.7124 of 1990. With regard to the petitioner's, specific prayer for a declaration that the termination of his services was invalid, the judgment is silent. It also requires to be noticed that in the earlier judgment in Writ Petition No.1440 of 1994, the petitioner has not pleaded any date with effect from which he was terminated from service.

In this writ petition also, the petitioner is ambivalent and vague as to the date with effect from which he was earlier terminated from service. In paragraph 5 of the affidavit filed in support of the writ petition, he pleads to have worked for different number of days during the period from March, 1989 to May, 1990. In paragraph 6 of the affidavit filed in support of the writ petition, he states that despite his having completed more than 240 days of service and having appeared for oral and written test, the second respondent issued the "impugned orders arbitrarily, purporting to disengage the services of the petitioner and other similarly placed employees". The date with effect from which he was terminated from service or the reference number or the date of the impugned order or the date of service of the order of termination or whether the termination was oral or by a written communication, is not stated. On such vague and sketchy pleadings claiming parity of treatment with the petitioners in W.P.No.7124 of 1990, this writ petition is filed.

A specific relief was sought in W.P.No.1440 of 1994 by the petitioner herein namely invalidation of an order of his termination. This relief was not granted either expressly or by any necessary implication, in the judgment of this Court dated 28-12-1995. It must, therefore, be presumed that the relief sought by the petitioner in this regard was negatived by this Court. It is too well settled that both the principles of *resjudicata* and of *constructive resjudicata* are applicable to writ petitions under Article 226 of the Constitution of India. In view of the fact that the order of his termination was un-successfully challenged by the writ petitioner in the earlier round of litigation in W.P.No.1440 of 1994, he cannot be permitted to re-agitate the aspect in this writ petition. Further, if termination of the petitioner's service was some time shortly after May, 1990 as could be inferred from the averments in paragraph 5 of the affidavit filed in support of the writ petition, grant of relief in this writ petition challenging such an order of termination would be impermissible as the relief sought by the petitioner is barred on account of latches and delay.

With regard to the relief of absorption into Assistant Grade-C, in the counter-affidavit, the respondents plead that after the judgment in W.P.No.1440 of 1994, no fresh recruitment was made, as there was no scope for fresh employment. There is no contest by the petitioner to this stand of the respondents.

For all the aforementioned reasons, this Court does not find any merit in the writ petition. The writ petition is accordingly dismissed, but in the circumstances without

costs.

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GODA RAGHURAM, J

16-08-2004

Glv/Pvsn

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

Copies to:

1. The Chairman and Managing Director,
Bharat Dynamics Ltd (A Government of India Co.,)
having Registered Office at Kanchanbagh Hyderabad.
2. The Deputy General Manager, (P&A) Bharat Dynamics Ltd.,
Bhanapur Medak Dist.

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